IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4897 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INS.CO.LTD.

Versus

ARTIBEN ARVINDBHAI PATEL WD/O ARVINDBHAI PATEL

Appearance:

MR PV NANAVATI for Appellant

MR CHETAN P PANDYA for Respondent No. 1-2

SERVED BY RPAD - (N) for Respondents No. 3-4

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 07/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the appellant and learned counsel for respondent nos.1 and 2 - original claimants.

2. Appeal admitted. Mr. Chetan Pandya appears for respondent nos.1 and 2 - original claimants and waives service of notice in the appeal.

3. On a joint request of learned counsel this appeal is taken up for final hearing today.

4. This is an appeal under section 173 of the Motor Vehicles Act, at the instance of the Insurance Company challenging the judgement and award of the Motor Accident Claims Tribunal (Main), Junagadh, in Motor Accident Claim Petition No.21/2000.

5. We have heard the learned counsel for the respective parties on quantum and merits and also on contentions on principle. We have also carefully perused the impugned judgement and award, and we have examined such evidentiary material on record to which our attention has been drawn.

6. In the context of the contention raised by the appellant to the effect that a claim preferred under the Motor Vehicles Act as also a claim preferred under the Workmen's Compensation Act before different fora are not simultaneously maintainable, the learned counsel for the respondents-original claimants made a statement that the claim before the Commissioner for Workmen's Compensation has already been withdrawn. It is, therefore, clear that the only compensation to which the original claimants would be entitled to would be that awardable to them under section 168 of the said Act.

7. As a result of the hearing and discussion, learned counsel for the respective parties agreed that a fair and reasonable estimate of the income of the deceased, based on the evidentiary material on record, would be Rs.2000/- per month, and that the appropriate compensation could be based on this figure.

8. Accordingly we find that an income of Rs.2000/- per month would amount to Rs.24000/- per annum. Therefore the compensation awardable as per the structured formula in Schedule II to the Act would be

Rs.3,60,000/-. From this one-third i.e. a sum of Rs.1,20,000/- is to be deducted by way of personal expenses. The compensation then payable would be Rs.2,40,000/-. To this would be added Rs.2000/- by way of funeral expenses, Rs.5000/- by way of loss of consortium and Rs.2500/- by way of loss to the estate. Thus, the total compensation would come to Rs.2,49,500/-. We hold and direct accordingly.

9. To conclude, therefore, the respondent nos.1 and 2 - original claimants would be entitled to an aggregate compensation in the sum of Rs.2,49,500/- with running interest at the rate of 9% per annum from the date of application till realisation with proportionate costs.

10. This appeal is, therefore, partly allowed with no order as to costs. Decree accordingly.

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